

Exhibit 316

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**IN RE : BLUE CROSS BLUE SHIELD
ANTITRUST LITIGATION
(MDL NO. 2406)**

Master File No. 2:13-CV-20000-RDP

This document relates to
Provider Track Cases

**Reply Report of H.E. Frech, III, Ph.D.
December 2, 2020**

231. The fundamental conclusion is that competition benefits consumers with lower premiums.³⁷¹ This simple but powerful economic truism has been shown to be true, not just for the market for commercial health insurance in Central PA post-2014, but at other times and places. For example, in 2001, after Highmark started the process for severing its joint operating agreement (JOA) with Capital PA and was beginning to compete, Scott Serota, the President of BCBSA, visited Central Pennsylvania to make a presentation to the Boards of Directors of the two Blue Plans. The stated purpose of the presentation was to encourage the two Blue Plans to continue their agreement not to compete. In his presentation, Serota referred to several historical Blue events that highlighted the adverse effects (to the Blue Plans) of competition. In one example he referred to the competition between two Virginia Blue Plans:

During the first year that the Plans competed with each other, Roanoke experienced significant enrollment gains while Richmond performed much like the rest of the market. This may be explained by the fact that Roanoke pursued an aggressive pricing policy while Richmond did not. By 1984 both Plans were pricing aggressively. Consequently, both Plans were gaining enrollment ... While gaining enrollment both Plans were suffering financially due to the aggressive pricing policy and the costs associated with the increased membership.³⁷²

232. This revealing statement by the President of the BCBSA recognizes that Blue-on-Blue competition results in lower premiums and higher output. Dr. Murphy's assessment of the nature of Blue-on-Blue competition in Central PA is not correct, it is not valid, and the support he offers for his opinion dissolves under scrutiny. Moreover, it is surprising and disappointing to read opinions that turn standard economic theory on its head by suggesting that consumers are made worse off with competition.

IX. Conclusion

233. This Class Certification Reply Report is written in response to Defendants' rebuttal reports. There are differences among the experts, many of which are discussed in detail in this report. But the most fundamental difference concerns our views of the but-for world. My view,

³⁷¹ It also benefits providers with better reimbursement rates, but Dr. Murphy did not address that dimension of competition in this section of his report and thus it is not discussed here.

³⁷² Serota Presentation (May 23, 2001), BCBSA01182102-119 at 109.

which is consistent with the view of Dr. Haas-Wilson, is that the but-for world is constructed by imaging a world where none of the alleged anticompetitive agreements would have ever existed, going back to the very beginning of the Blue Cross Blue Shield Plans in the 1930s. Such a backward-looking, historical point of view generates the ideal but-for world. In that more competitive but-for world, entry and growth over time would have led to a competitive steady state well before the start of the damage period. One implication of this understanding is that observable entry and competition is from an actual world that has been contaminated and influenced by the Blue Plan agreements from the beginning.

234. The Defendants' experts appear to take the view that the but-for world concerns the future and is informed by the recent past. That mistaken view is behind many of the errors that I discuss in this report.

235. Recognizing that she would be unable to quantitatively estimate the but-for reimbursements from this ideal but-for world, Dr. Haas-Wilson took advantage of the limited Blue-on-Blue competition existing in modern times to create a practical, but conservative benchmark.

236. Based on my review of the Defendants' rebuttal reports as well as discussions with Dr. Haas-Wilson and Dr. Slottje, my opinions regarding class certification remain unchanged.



H.E. Frech, III Ph.D.